IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No:	10/826,671
Examiner:	Parra, Omar S.
Art Group:	2623
Reference No.:	BPCUR0007MC (C-52)
Appn. Filed:	April 16, 2004
Applicants:	Chen, Michael et al.

Title: Method and apparatus for creating a targeted integrated image

February 14, 2011

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia

Sir:

This Appeal Brief is being filed after a Notice of Panel Decision from Pre-Appeal Brief Review that was mailed January 12, 2011, a Brief being due therefrom by February 12, 2011. As February 12 falls on a Saturday, Applicant notes that the Brief is due by February 14, 2010, which is the Monday falling immediately thereafter. Only one copy of this appeal brief is being filed, in accordance with the requirements of MPEP §1205.02.

REAL PARTY IN INTEREST:

The real party in interest is Concurrent Computer Corporation, 100% interest assignee of record, whose current headquarter and mailing address is 4375 River Green Parkway, Suite 100, Duluth, Georgia 30096 by way of an assignment from the inventors recorded at reel 014857 frame 0189, on July 14, 2004. An ancillary assignment correcting the name of one of the inventors was recorded at reel 015628, frame 0849, on August 2, 2004. Concurrent Computer Corporation, the assignee, is the owner of 100% interest.

RELATED APPEALS/INTERFERENCES:

This is the only pending appeal of this application. There are no pending interferences to the best knowledge of the Applicant. A decision from a Pre-Appeal Conference Request was mailed on January 12, 2011. In the decision, the panel indicated that this appeal should proceed to the Board.

STATUS OF CLAIMS:

Claims 1, 4, 5, 7-11, 13, 18-25, 27-32, 37, 41-43, and 48-52 are currently pending in this application.

Claims 1, 4, 5, 7-10, 18-25, 27-32, 37, 38, 41-43, 48-50, and 52 stand rejected as being obvious under 35 USC §103 in view of Plotnick et al., US Published Patent Application No. 2002/0184047, hereinafter "Plotnick," in view of O'Kane, US Published Patent Application No. 2003/0105831.

Claim 11 is rejected under 35 USC §103(a) as being unpatentable in view of Plotnick and O'Kane in view of Knudson et al., US Published Patent Application No. 2003/0110499, hereinafter "Knudson."

Claim 51 is rejected under 35 USC §103(a) as being unpatentable in view of Plotnick and O'Kane, further in view of Sie et al., US Published Patent Application No. 2004/0030599, hereinafter "Sie."

A listing of the claims appears at the end of this Appeal Brief.

The status of each individual claim is listed below:

Claim 1: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 2: Canceled.

Claim 3: Canceled.

Claim 4: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 5: Original Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 6: Canceled.

Claim 7: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 8: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 9: Original; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 10: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 11: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane and Knudson; Appealed herein.

Claim 12: Canceled.

Claim 13: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 14: Canceled.

Claim 15: Canceled.

Claim 16: Canceled.

Claim 17: Canceled.

Claim 18: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 19: Original; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 20: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 21: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 22: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 23: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 24: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 25: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 26: Canceled.

Claim 27: Original; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 28: Original; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 29: Original; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 30: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 31: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 32: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 33: Canceled.

Claim 34: Canceled.

Claim 35: Canceled.

Claim 36: Canceled.

Claim 37: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 38: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 39: Canceled.

Claim 40: Canceled.

Claim 41: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 42: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 43: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 44: Canceled.

Claim 45: Canceled.

Claim 46: Canceled.

Claim 47: Canceled.

Claim 48: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 49: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 50: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

Claim 51: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane and Sie; Appealed herein.

Claim 52: Previously Presented; Rejected under 35 USC §103(a) as being unpatentable over Plotnick and O'Kane; Appealed herein.

STATUS OF AMENDMENTS:

The present application has a lengthy prosecution history. The summary of Amendments is set forth here in bullet-point form:

- Applicant filed an amendment on April 16, 2008, in response to a Non-Final Office Action mailed October 16, 2007. In the amendment, claims 1, 4, 13, 25, 37, and 38 were amended. Claims 2, 3, 12, 14, 17, 26, 33, 34, 35, 36, 39, 44, 45, 46, and 47 were canceled.
- Applicant filed an amendment and Request for Continued Examination on December 10, 2008, in response to a Final Office Action mailed July 10, 2008. In the amendment, claims 1, 18, 20, 21, 22, 23, 24, 25, 41, 42, and 43 were amended. Claims 15 and 16 were canceled. New claims 48, 49, 50, and 51 were added.
- Applicant filed an amendment on May 19, 2009, in response to a Non-Final Office Action mailed February 20, 2009. Claims 1, 7, 8, 25, 30, 31, and 32 were amended. Claims 6 and 40 were canceled.
- Applicant filed an response and Request for Continued Examination on December 15, 2009, in response to a Final Office Action mailed September 1, 2009, and after an Examiner Interview on December 4, 2009, with a summary thereof being mailed on December 9, 2009. No claims were amended.
- Applicant filed an amendment on March 4, 2010, in response to a Non-Final Office Action being mailed February 15, 2010. Claims 1 and 25 were amended.
- Applicant filed a Notice of Appeal and Request for Pre-Appeal Conference on November 22, 2011, in response to a Final Office Action mailed June 22, 2010.
- No other amendments have been filed in this case.

SUMMARY OF CLAIMED SUBJECT MATTER:

An Appeal Brief must include a concise explanation of the subject matter defined in each *of the independent claims* involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters. Accordingly, Applicant includes below a listing of the claims with reference to the specification and figures, including reference designators. Applicant's attorney has found in Appellate practice that an express recitation of the claims, with reference to the specification and figures, is frequently the most efficient way to satisfy the requirements of 37 CFR 41.37(c)(1)(b). Thus, turning now specifically to the independent claims, with reference to the specification and figures, each independent claim is set forth below:

1. (Previously Presented) A method for creating at least one targeted integrated image for delivery to a user (FIG. 2, generally, page 4, lines 15-16), the method comprising:

determining content of potential interest to the user (FIG. 2, element 2010, page 11, lines 13-14, Abstract, page 3, lines 26-27, FIG. 2, element 2055, page 12, lines 1-2) based on at least one user preference (*Id.*, see also FIG. 3, generally, page 12, lines 12-13) comprising content ordering habits of the user (Abstract, page 4, lines 5-6) while the user is receiving a first image (page 3, line 28 through page 4, line 1) comprising a video file (*Id.*) for viewing via digital cable television (page 5, lines 18-20);

determining content previously ordered or viewed by the user (FIG. 2, element 2060, page 11, lines 25-56, FIG. 2, element 2065, page 12, lines 2-4);

in a queue of available barker advertisements, removing barker advertisements corresponding to the content previously ordered or viewed by the user (FIG. 2, element 2060, page 11, lines 25-27, page 12, lines 2-4);

selecting a second image comprising a barker advertising the content of potential interest to the user from advertising barkers remaining in the queue (FIG. 2, element 2070, page 11, lines 27-28, page 12, lines 7-8); and

combining the second image comprising the barker advertising the content of potential interest to the user with the first image to form an integrated image for delivery to the user (Abstract, page 4, lines 1-4, page 8, lines 14-19); and

delivering the integrated image to the user (FIG. 2, element 2070 or 2080, page 12, line 9).

25. (Previously Presented) An apparatus for creating at least one targeted integrated image for delivery to a user (FIG. 1, generally, page 5, lines 7-8, page 3, lines 24-25), the apparatus comprising:

a processor (FIG. 1, CPU element, page 6, lines 16-17) for determining content of potential interest to the user based on at least one user preference (page 8, lines 10-12, page 10, lines 8-15), prior to or during the user's request for a first image comprising a video file or while the user is receiving the first image (Abstract, page 3, line 27 through page 4, line 1);

determining content previously ordered or viewed by the user (page 8, lines 10-11, FIG. 2, element 2060, page 11, lines 25-56, FIG. 2, element 2065, page 12, lines 2-4);

removing from a queue barker advertisements corresponding to the content previously viewed by the user (FIG. 2, element 2060, page 11, lines 25-27, page 12, lines 2-4); and

selecting a second image comprising a barker advertising the content of potential interest to the user from barker advertisements remaining in the queue, and wherein the processor determines the content of potential interest to the user that has not previously been viewed by the user (FIG. 2, element 2070, page 11, lines 27-28, page 12, lines 7-8); and

a combiner (page 8, lines 20-25) for combining the second image with the first image to form an integrated image for delivery to the user, and wherein the combiner inserts the second image within the first image (Abstract, page 4, lines 1-4, page 8, lines 14-19).

GROUNDS OF REJECTION TO BE REVIEWED ON Appeal:

Ground 1

Whether claim 1 is patentable under 35 USC §103(a) in view of Plotnick and O'Kane.

Ground 2

Whether claim 25 is patentable under 35 USC §103(a) in view of Plotnick and O'Kane.

Ground 3

Whether claim 11 is patentable under 35 USC §103(a) in view of Plotnick and O'Kane and Knudson.

Ground 4

Whether claim 51 is patentable under 35 USC §103(a) in view of Plotnick and O'Kane and Sie.

ARGUMENT:

Comments on Grouping of Claims:

Claims 4, 5, 7-11, 13, 18-24 each depend from claim 1. For the purposes of Ground 1, Applicant respectfully submits that these claims may be grouped together, with claim 1 as the exemplary claim. Claims 27-32, 37, 41-43, and 48-52 depend from claim 25. For the purposes of Ground 2, these claims can be grouped together, with claim 25 as the exemplary claim. Claims 11 and 51 are rejected individually, and thus are not suited for grouping with other claims for the purposes of Ground 3 and Ground 4, respectively.

Ground 1

Applicant's independent claim 1 recites, *inter alia*, the following:

- determining content previously ordered or viewed by the user and,
- in a queue of available barker advertisements,
- removing unviewed barker advertisements *corresponding to the content previously ordered or viewed by the user*.

At page four of the Final Office Action mailed June 22, 2010, the Examiner acknowledges that Plotnick fails to teach the highlighted limitation above. "Plotnick does not explicitly teach determining content previously ordered or viewed by the user and removing from a queue barker advertisements corresponding to the content previously viewed by the user." *Id.*

However, the Examiner submits that O'Kane teaches this missing limitation at paragraphs [0075]-[0077] by teaching a single playing of a commercial that is included with downloaded music. The Examiner then states, "…it would have been obvious to one of ordinary skill in the art to have modified Plotnick's invention with O'Kane's feature of deleting a commercial once an associated content has been played for the benefit of narrowly targeting commercials and at the same time giving more space on the memory for new advertisements." Applicant respectfully disagrees with the submission that O'Kane teaches a removal, from a queue, of unviewed barker advertisements corresponding to the content previously ordered or viewed by the user.

Applicant respectfully submits that *neither* Plotnick nor O'Kane, alone or in combination, teaches a removal of barker advertisements, from a queue, where those

barker advertisements correspond to content previously ordered by a user. The combination of Plotnick and O'Kane therefore fails to make known or obvious the highlighted limitations of claim 1 set forth above.

Beginning with Plotnick, Plotnick teaches removing advertisements based upon *a predetermined number of times that they have been viewed by a user*. Plotnick states at paragraph [0061], "Once the ads have been played from the top of the queue they may be added back to the queue, either at the bottom or some other location depending on the algorithm associated with the ad and the ad queue. The ad queue may also have limitations on the *duration of time the ad is in the queue*, *the number of times the ad is played within a specific time* (or other factor), *the time frame between displaying the ads*, or some other criteria now known or later discovered that would be obvious to one of ordinary skill in the art." Similarly, at paragraph [0081], Plotnick gives other reasons ads can be removed. Plotnick states, "…UAQ is updated each time an individual ad queue needs to be updated because it is out of ads (i.e., *played maximum number of times*, *ad campaign over*, *new advertisers have purchased avails*, *existing advertisers have opted out of their avails*, or any other number of reasons that would be obvious)."

As acknowledged by the Examiner at page four of the Final Office Action, none of these reasons is because the ad corresponds to previously viewed content.

As noted above, the Examiner submits that the addition of O'Kane to Plotnick corrects this deficiency, citing paragraphs [0075]-[0077] of O'Kane. Applicant respectfully disagrees. Contrary to the assertion of the Examiner, O'Kane teaches *the exact same removal criteria* that Plotnick does, i.e., removal based upon *a predetermined number of views*.

O'Kane teaches a system that uses a digital acknowledgement trigger to regulate peer-to-peer file exchange programs to "…track the actual users file use and royalty payment." O'Kane, paragraph [0035]. The viewing of an advertisement "…acts as their payment for 'proper use.'" *Id.* Said differently, "…in return for some type of payment such as viewing an advertisement…they can browse and download available content within the network, or otherwise transact with the network." O'Kane, paragraph [0038].

To this end, property owners can "…approach advertisers or partners for commercialism of the P2P networking or file sharing 'process'." O'Kane, paragraph

[0060]. O'Kane's software trigger then "…allows for a process that in which commercial advertisement can also be assigned before 'delivery or download' based on the users 'preferences' that will open before the file is downloaded by the user/computer 10 and serves it's purpose." O'Kane, paragraph [0059]. A user then selects an advertisement for viewing. O'Kane, paragraph [0060].

It is clear that O'Kane does nothing to correct the deficiencies of Plotnick because O'Kane, like Plotnick, teaches removing advertisements *after a predetermined number of views.* At paragraph [0077], upon which the Examiner relies in making the rejection, O'Kane states, with Applicant's emphasis, the following:

> The end users MP3 or video player or file reader will assemble the "digital audio or video" file and the Commercial together. *Once the commercial is played, the software trigger, or "digital acknowledgement trigger" can be or removed by the user.* The user when the royalty is paid from the invention process then is allowed "proper use." *The end user* ***will only hear the commercial once per download*** *of that specific song or video is played.*

"Once per download" is a frequency, i.e., a number of times something should be played prior to removal. Applicant very respectfully submits that O'Kane therefore teaches removal for the *same reason* Plotnick does: based upon a predetermined number of views. In paragraph [0077] of O'Kane, which is relied upon by the Examiner, this "number of views" is 1. When the advertisement is viewed once, the payment is complete, and the advertisement can be removed. This criteria, a predetermined number of views, is exactly the same that is set forth in Plotnick at paragraph [0081], *supra*. The Examiner acknowledges that a criterion of a "number of times viewed" is deficient in teaching Applicant's claim 1 at page four of the Final Office Action. If Plotnick is deficient, O'Kane must be similarly deficient.

Next, Applicant's claim 1 does not claim a number of times as the criterion, but rather the advertisement *corresponds to previously viewed content*. O'Kane removes advertisements from the user's system, not a queue, after the *advertisement* has been viewed. By contrast, Applicant's claim 1 removes the advertisement if it corresponds to previously viewed content *regardless* of whether the advertisement has been viewed. Thus, while O'Kane's criterion requires an advertisement to be played at least once with the first playing of downloaded music, regardless of whether the ad corresponds to previously heard music, Applicant's invention offers an advantage in that if an ad

corresponds to previously viewed content, it can be removed from the queue so that the viewer need not ever see it at all.

For at least this reason, the addition of O'Kane to Plotnick fails to correct the deficiency of the primary reference because O'Kane simply reiterates the removal criteria of the primary reference. Said differently, the addition of O'Kane to Plotnick simply reiterates a criteria that the Examiner acknowledges as deficient in making known or obvious Applicant's claimed limitations. For this reason, Applicant respectfully requests withdrawal of the rejection.

Ground 2

Applicant respectfully notes that claim 25 recites the highlighted limitations set forth with reference to claim 1 above. Further, claim 25 is rejected in view of Plotnick and O'Kane, as is claim 1. Since claim 25 recites similar limitations, and is rejected in view of the same references, Applicant respectfully traverses this rejection for the same reasons set forth above with reference to claim 1.

Ground 3

The Final Office Action rejects claim 11 as being unpatentable in view of Plotnick, O'Kane, and Knudson.

Applicant has shown above that the combination of Plotnick and O'Kane fails to teach removal of any barker advertisements from a queue where those advertisements correspond to previously viewed or ordered content. The addition of Knudson to Plotnick and O'Kane fails to correct this deficiency, at least for the reason that Knudson fails to teach a queue of barker advertisements at all. The resulting combination therefore suffers from the same deficiency as the base combination. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Ground 4

Claim 51 is rejected under 35 USC §103(a) as being obvious over Plotnick and O'Kane, further in view of Sie.

Applicant is shown above that the combination of Plotnick and O'Kane fails to teach removal of any barker advertisements from a queue that correspond to previously ordered or viewed content. The addition of Sie to Plotnick and O'Kane fails to correct this deficiency.

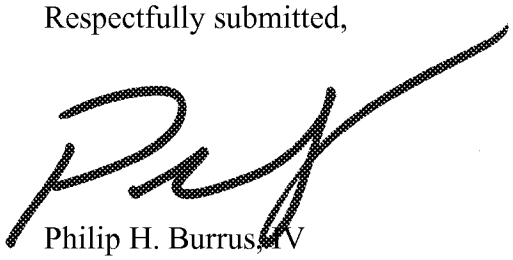
Sie, like O'Kane, fails to teach determining previously viewed content and removing barker advertisements from a queue that correspond to the previously viewed content. Sie merely teaches thwarting attempts to view commercials already inserted into, and transmitted with, content based upon a user's authorization. Such advertisements are not barkers selected from a queue where some barkers have been removed, as is recited in Applicant's independent claims, from which claim 51 depends.

At paragraph [0132] Sie prevents users from viewing advertisements that "…appear in linearly scheduled programs or free VOD (FVOD) programs…" Sie does this, for example, where a user "…would pay for the ability to curtail or eliminate some or all advertising." Sie, paragraph [0133]. Further, when combined with Plotnick and O'Kane, the resulting combination employing Plotnick's queue and either Plotnick's or O'Kane's remval techniques teaches only the removal of already viewed advertisements as noted above. There is no reason the teaching of Sie would motivate one to do the opposite of the teachings of Plotnick or O'Kane regarding the criteria for removing advertisements from Plotnick's queue. For these reasons, Applicant respectfully requests withdrawal of the rejection.

CONCLUSION

For the above reasons, Applicant believes the specification and claims are in proper form, and that the claims all define patentably over the prior art. Applicant believes this application is in condition for allowance, for which it respectfully submits.

Respectfully submitted,



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CLAIMS APPENDIX

Listing of Claims:

1. (Previously Presented) A method for creating at least one targeted integrated image for delivery to a user, the method comprising:

determining content of potential interest to the user based on at least one user preference comprising content ordering habits of the user while the user is receiving a first image comprising a video file for viewing via digital cable television;

determining content previously ordered or viewed by the user;

in a queue of available barker advertisements, removing barker advertisements corresponding to the content previously ordered or viewed by the user;

selecting a second image comprising a barker advertising the content of potential interest to the user from advertising barkers remaining in the queue; and

combining the second image comprising the barker advertising the content of potential interest to the user with the first image to form an integrated image for delivery to the user; and

delivering the integrated image to the user.

2. (Canceled)

3. (Canceled)

4. (Previously Presented) The method of claim 1, wherein content ordering habits includes at least one of information indicating times at which the user previously viewed or ordered content, genres of content previously viewed or ordered by the user, characteristics of content previously viewed or ordered by the user, and menu selections made by the user.

5. (Original) The method of claim 1, further comprising determining an identity of the user, wherein the content of potential interest to the user is determined based on an at least one user preference associated with the identity of the user.

6. (Canceled)

7. (Previously Presented) The method of claim 1, further comprising: determining images available in the queue.

8. (Previously Presented) The method of claim 1, further comprising: marking the second image delivered to the user as having been delivered; and placing the marked image at the end of the queue, wherein the step of selecting selects images sequentially from the beginning of the queue.

9. (Original) The method of claim 1, wherein the first image includes at least a menu or a programming guide.

10. (Original) The method of claim 9, wherein the step of determining is initiated in response to the user accessing the menu or programming guide.

11. (Original) The method of claim 9, wherein the step of determining is performed based on menu or programming guide selections made by the user as the user navigates through the menu or programming guide.

12. (Canceled)

13. (Previously Presented) The method of claim 1, wherein the step of determining is initiated responsive to the user requesting the video content.

14. (Canceled)

15. (Canceled)

16. (Canceled)

17. (Canceled)

18. (Previously Presented) The method of claim 1, further comprising repeating the steps for creating at least one new integrated image for delivery to the user.

19. (Original) The method of claim 18, wherein the steps are repeated as the user continues to request or receive images.

20. (Previously Presented) The method of claim 18, wherein the steps are recursively repeated for delivering new integrated images for delivery to the user.

21. (Previously Presented) The method of claim 1, further comprising compressing at least one of the first image or the second image to forming the integrated image.

22. (Previously Presented) The method of claim 1, wherein the step of combining includes inserting the second image within the first image, wherein the first image is adapted to appear to the user to be paused.

23. (Previously Presented) The method of claim 22, wherein the first image is adapted, for delivery to the user, to appear to be paused.

24. (Previously Presented) The method of claim 22, wherein the first image is adapted, upon delivery to the user, to appear to be paused.

25. (Previously Presented) An apparatus for creating at least one targeted integrated image for delivery to a user, the apparatus comprising:

a processor for determining content of potential interest to the user based on at least one user preference, prior to or during the user's request for a first image comprising a video file or while the user is receiving the first image;

determining content previously ordered or viewed by the user;

removing from a queue barker advertisements corresponding to the content previously viewed by the user; and

selecting a second image comprising a barker advertising the content of potential interest to the user from barker advertisements remaining in the queue, and wherein the processor determines the content of potential interest to the user that has not previously been viewed by the user; and

a combiner for combining the second image with the first image to form an integrated image for delivery to the user, and wherein the combiner inserts the second image within the first image.

26. (Canceled)

27. (Original) The apparatus of claim 25, wherein the user preference includes information representing content viewing habits or content ordering habits of the user.

28. (Original) The apparatus of claim 27, wherein the information representing content viewing or content ordering habits includes at least one of information indicating times at which the user previously viewed or ordered content, genres of content previously viewed or ordered by the user, characteristics of content previously viewed or ordered by the user, and menu selections made by the user.

29. (Original) The apparatus of claim 25, wherein the processor determines content of potential interest to the user based on an at least one user preference associated with an identity of the user.

30. (Previously Presented) The apparatus of claim 25, wherein the first image or the third image is adapted to appear as a picture-in-picture display with the barker advertising the content of potential interest to the user presented as a first picture within a second picture of the video file.

31. (Previously Presented) The apparatus of claim 25, wherein the processor determines content previously ordered or viewed by the user, determines images available in the queue, and removes removing images related to the previously ordered or viewed content from the queue.

32. (Previously Presented) The apparatus of claim 25, wherein the processor marks the second image delivered to the user as having been delivered, places the marked image at the end of the queue, and selects images sequentially from the beginning of the queue.

33. (Canceled)

34. (Canceled)

35. (Canceled)

36. (Canceled)

37. (Previously Presented) The apparatus of claim 25, wherein the processor begins determining content of potential interest to the user responsive to the user requesting the video content.

38. (Previously Presented) The apparatus of claim 25, wherein the processor begins determining content of potential interest to the user as the user receives the video content.

39. (Canceled)

40. (Canceled)

41. (Previously Presented) The apparatus of claim 25, wherein the processor repeatedly determines and selects content of potential interest, and the combiner repeatedly combines the selected content with an image for creating at least one new integrated image for delivery to the user.

42. (Previously Presented) The apparatus of claim 41, wherein the at least one new integrated image is created as the user continues to request or receive images.

43. (Previously Presented) The apparatus of claim 41, wherein the at least one new integrated image is recursively created for delivery to the user.

44. (Canceled)

45. (Canceled)

46. (Canceled)

47. (Canceled)

48. (Previously Presented) The method of claim 1, wherein the integrated image is configured to appear as a picture-in-picture display in accordance with predetermined rules.

49. (Previously Presented) The method of claim 48, wherein the predetermined rules comprise presenting the barker advertising the content of potential interest to the user during an introduction of the video file.

50. (Previously Presented) The method of claim 48, wherein the predetermined rules comprise presenting the barker advertising the content of potential interest to the user during credits of the video file.

51. (Previously Presented) The method of claim 1, wherein the barker advertising the content of potential interest to the user has a first genre associated therewith, wherein the video file has a second genres associated therewith, wherein the determining content of potential interest to the user based on at least one user preference comprising content ordering habits of the user comprises selecting the first genre so as to be different from the second genre.

52. (Previously Presented) The method of claim 1, wherein the integrated image is configured to appear as a picture-in-picture display with the barker advertising the content of potential interest to the user presented as a first picture within a second picture of the video file.

EVIDENCE APPENDIX

There are no evidentiary submissions included with this brief.

RELATED PROCEEDINGS INDEX

No decisions have been rendered by either the Board or a court having appropriate jurisdiction.